

Subchapter 7. Recusal Process

19:61-7.1 Purpose

The purpose of this subchapter is to provide State officials with guidance regarding the circumstances under which a State official must recuse himself or herself and procedures as to properly effectuating a recusal.

19:61-7.2 Scope

The rules in this subchapter apply to all State officers and employees and to all special State officers and employees as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e), which definitions are incorporated in N.J.A.C. 19:61-7.3.

19:61-7.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Person" means any natural person, association, organization, firm, partnership or corporation (N.J.S.A. 52:13D-13(f)).

"Recusal" means the process by which a person is disqualified, or disqualifies himself or herself, from a matter because of a conflict of interest.

"Relative" means a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

"State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State (N.J.S.A. 52:13D-13(a)).

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).

19:61-7.4 Situations where recusal is required

(a) A State official must recuse himself or herself from a matter if he or she has:

1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State official's public duties; or
2. Any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties.

(b) For purposes of (a) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his/her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his

or her trust as a State official.

(c) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (a) and (b) above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Executive Commission on Ethical Standards for guidance in such cases.

(d) A State official must seek the advice of the State agency's counsel, agency ethics liaison officer or the Executive Commission on Ethical Standards as to the propriety of participation in a matter if any person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by a writing, may be provided by the agency's counsel, the agency ethics liaison officer or the Executive Commission on Ethical Standards to avoid delay. Oral advice should subsequently be memorialized by a writing or by inclusion in public minutes.

EXAMPLES

The spouse of the Director of the Division of Solid and Hazardous Waste ("Division"), Department of Environmental Protection, recently became a partner in ABC, an environmental consulting firm that represents clients before the Division. The Director must recuse himself from any involvement with ABC matters that come before the Division. The recusal must be memorialized in writing and conform to the standards of N.J.A.C. 19:61-7.5(b).

The Director of a program that regulates health insurance carriers has been approached about possible employment by a regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending. The solicitation must immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his/her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of N.J.A.C. 19:61-7.5(b).

Pursuant to N.J.A.C. 19:61-3.1(e), if a member of the Executive Commission on Ethical Standards ("ECES") holds office or employment in the same Department which employs a State official named in an allegation, he or she must disqualify himself or herself from participation in any decisional process relating to that particular case. One of the ECES meeting agenda items is an allegation that a Department of Personnel employee has violated the Conflicts of Interest Law. Because the ECES

Chairwoman is the Commissioner of the Department of Personnel, materials associated with this matter would not be forwarded to her. In addition, the Chairwoman would place her recusal and the reason for such recusal on the record at the meeting and leave the room during non-public deliberations.

A member of the Real Estate Commission ("REC") is a Director and past President of the New Jersey Association of Realtors ("NJAR"). The NJAR currently opposes a regulation proposed by the REC, has submitted a letter outlining its position, and plans to attend the REC meeting to express its opposition to the regulation. Because the REC member is an officer of the NJAR, he must recuse himself from discussions

and voting on the regulation in question.

19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the Executive Commission on Ethical Standards. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) All recusals, other than those provided for in (c) below, must be memorialized in writing. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;
2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);
3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);
4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and
5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain the writing for as long as the State official serves in his or her position.

(c) In the case of a State agency that maintains a public record of a proceeding, that is, a Board or Commission meeting, formal written recusal is not required; however, the following procedures must be followed:

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;
2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and
3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

APPENDIX

Sample Recusal Statements

Sample Recusal Statement: Seeking Employment

DATE: _____

TO: Agency Ethics Liaison Officer
Executive Commission on Ethical Standards

FROM: Name of Employee

SUBJECT: Recusal - Seeking Employment with (Name of Outside Organization)

This is to notify you that I am seeking employment with (Name of Outside Organization).

My seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duties that involve the above organization. I understand that I may not participate in any way as a State official in any matters regarding the above organization. Furthermore, I understand that it would be appropriate for any matters specifically involving the above-named organization to be referred to my supervisor without consulting me or informing me that such matters are pending. This action is taken with the

concurrence of my Division Director, as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all employment seeking activity has terminated and I receive written permission from the agency ethics liaison officer to resume interactions with the outside organization.

	_____	Employee's Name
Recommend:	_____	_____
	(Name of Employee's Director/Supervisor)	Date
Approve:	_____	_____
	Ethics Liaison Officer	Date

Sample Recusal Statements Conflicts

DATE: _____

TO: Designee(s)

FROM: Name of Employee

SUBJECT: Recusal

Because I may be seen to have a conflict of interest in matters affecting (names of individuals/companies)_____, I am delegating all responsibility and authority for handling any such matters to you. Please ensure that I am screened from any information or communications on any such matters. By copy of this memorandum, I am instructing (names of colleagues/subordinates)_____ to ensure that I do not receive any communications on any matters affecting (names of individuals/companies)_____.

dls

c: subordinates responsible for screening communications
Ethics Liaison Officer
Executive Commission on Ethical Standards